

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION NO. 7564 OF 1990**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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**INDIAN FARMERS FERTILISER  
COOPERATIVE LIMITED - Petitioner(s)  
Versus  
UNION OF INDIA & ANR. - Respondent(s)**

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**Appearance :**

SHRI MANISH R. BHATT for Petitioner(s).  
SHRI J.J. YAJNIK for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 29/11/2006**

**ORAL JUDGMENT**

Heard Shri Manish R. Bhatt, learned Counsel for  
the petitioner, and Shri J.J. Yajnik, learned Counsel for

the respondents.

2. Shri Bhatt, learned Counsel for the petitioner, submits that the petitioner, which is a multi-unit Cooperative Society, is manufacturing fertilizers, which are distributed to the farmers in various parts of the country through warehousing system. According to them, the goods manufactured by them are to be moved from the manufacturing point to the stocking point at various stations. He submits that in accordance with General Order No.1/1987 (Rationalisation Scheme), effective from 1<sup>st</sup> March, 1987, all goods traffic from dual gauge stations to dual gauge stations were to be routed through B.G. (broad gauge) stations to B.G. stations and *vice versa*, the goods were to be moved by all B.G. routes and to meter gauge stations and *vice versa*, the goods were to be moved by meter gauge routes. He submits that the petitioner issued various indents for allotment of broad gauge wagons, but, because of non-availability of the broad gauge wagons, the Western Railways provided some meter gauge wagons and issued a direction that the goods may be sent to Sarai Rohilla, Delhi for transshipment. The goods were, accordingly, loaded at various places, were off-loaded at Sarai Rohilla and were then reloaded in the broad gauge wagons. The petitioner, according to

the demand raised by the Western Railways, made the payments as there was no issue relating to less payment or under payment. However, the audit raised an objection against the Northern Railways that they were under paid and were required to recover extra amount as the goods did not travel in accordance with the General Order No.1/1987. As many as eight debit notes were issued, out of which sum of Rs.92,830/- was recovered on 8<sup>th</sup> December, 1989, Rs.66,210/- were recovered on 19<sup>th</sup> September, 1989 and sum of Rs.60,283/- was recovered on 26<sup>th</sup> June, 1990; five debit notes are still standing against the petitioner.

2.1 When the Northern Railways issued debit Notes, the Western Railways *vide* their letter dated 5<sup>th</sup> April, 1989 bearing No.IFFCO 21/4/89/1 (Annexure-G) informed the Northern Railways that "IFFCO Siding - Kalol was purely meter gauge and served by Kalol (M.G.). The TFC indented via M.G. route will be despatched via Kalol on M.G. route". It was also written that "Kalol was not on M.G. + B.G. Siding, as stated in the letter of the Northern Railways letter, but, it was purely on M.G. route and consignment booked via Kalol on M.G. route charged as per the M.G. Route, accordingly, hence, the question does not arise for hiking under charges". Despite this letter, as

the money was recovered and the demand was kept standing, the petitioner had come to this Court.

2.2 Each of the respondents, that is, Western Railways and Northern Railways, has filed their counter affidavits. They are placing strong reliance upon General Order Nos.1/1987 and 1/1986. Their submission is that both the orders have been upheld by the Division Bench of this Court, therefore, the petitioner is required to make the payment, as demanded by them.

2.3 Rejoinders have been filed reiterating the stand and explaining the pleadings further.

3. Shri Bhatt, learned Counsel for the petitioner, submits that the petitioner had asked the Railways to provide broad gauge wagons and if because of non-availability of such wagons, the Railway Administration was providing meter gauge wagons and on their assurance, the petitioner loaded the goods at particular place for particular destination, then, no wrong in the action of the petitioner could be found and in any case, the respondents would not be entitled to recover any amount in addition to what could be charged in accordance with the Policy.

4. So far as the question of validity of the General Order Nos.1/1987 and 1/1986 (Rationalisation Schemes) are concerned, the petitioner is not disputing the same, but, his simple submission is that despite the demand of broad gauge wagons, if the Railway Administration was supplying meter gauge wagons, then, the wrong was not with the petitioner, but, the wrong was at the end of the Railways.

5. The submissions and pleadings of the petitioner regarding the demand of broad gauge wagons, non-availability of broad gauge wagons and supply of meter gauge wagons at the sweet will and discretion of the Railways, have not been denied by the respondents. What they have only submitted is that the General Order (Rationalisation Schemes) Nos.1/1987 and 1/1986 would rule the field.

6. In the opinion of this Court, the action of the Northern Railways cannot be approved. The counter reply filed by the Western Railways runs contrary to what it had said earlier in its letter addressed to the Northern Railways. On an earlier occasion, if the Western Railways was of the view that no additional charges could be

recovered under the head of under charges, then, they cannot be allowed to change their stand/s unless they explain the circumstances in which the earlier letter was written.

7. From the facts, it would clearly appear that the petitioner was clearly asking for broad gauge wagons, but, the Railway Administration, because of non-availability of the required broad gauge wagons, was supplying meter gauge wagons. If for the convenience of the Railways, they were providing meter gauge wagons, then, they cannot be allowed to take advantage of their own wrong. All the demand-cum-debit notes deserve to and are, accordingly, quashed. Any amount recovered by the respondents from the petitioner shall be refunded by them within three months from the date of service of notice. The petition is allowed. Rule is made absolute. No costs.

*[R.S.Garg, J.]*

*kamlesh\**